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September 1, 2005

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

**Re: WC Docket 05-196; Subscriber Notification Report and Compliance Letter for  
Voxpath Networks, Inc.**

**Electronic Filing - Via ECFS**

Dear Ms. Dortch:

Submitted herewith is a Subscriber Notification Report and Compliance Letter for Voxpath Networks, Inc. ("Voxpath"), as required by the Commission (and clarified by the Enforcement Bureau) in WC Docket 05-196.

Please note that this Report and Letter are submitted to reassure the Commission that Voxpath's customers have been given the notifications requested by the Commission, and that Voxpath is ensuring that the Commission's concerns are answered, although it is Voxpath's position that it is not an "Interconnected VoIP Service" provider," is not required to comply with 47 C.F.R. Part 9, and is an entity specifically excluded from the coverage of that section by both the terms of the regulations and the exclusion contained in Footnote 78 in Paragraph 24 of the First Report and Order in WC Dockets 04-36 and 05-196. Regardless, Voxpath has determined that it would be advisable to give this information to its customers to ensure that they understand the limitations that may be applicable to E911 service, and to reassure the Commission that this information has been communicated.

Voxpath Networks, Inc. has its primary offices at 7600 B North Capital of Texas Highway, Suite-220, Austin, TX 78731.

Voxpath provides IP-compatible CPE, IP-PBX, and enhanced services to multi-line business customers. It does not, however, itself provide interconnection to the PSTN or permit customers to receive calls that originate on the PSTN and to terminate calls to the PSTN. These functions are provided to Voxpath customers by other entities, with which Voxpath customers must contract. In order to use Voxpath's services, customers must themselves obtain both a broadband connection to their location and interconnection to the PSTN, typically through arrangements with local and long distance service providers. The local service providers

undertake the obligation to transmit all 911 calls, as well as ANI and the subscriber's Registered Location, to the PSAP or other appropriate authority. In short, Voxpath is not a provider of interconnected VoIP service, and falls under the exclusion contained in Footnote 78 in Paragraph 24 of the First Report and Order in WC Dockets 04-36 and 05-196.

Please refer any questions or correspondence regarding this matter to the undersigned.

Very truly yours,

David Bolduc

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## Report

*Detailed description of all actions the provider has taken to specifically advise every subscriber, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VoIP service and/or may be in some way limited by comparison to traditional E911 service. This information should include, but is not limited to, relevant dates and methods of contact with subscribers.*

Beginning on July 1, 2005, Voxpath began including in its retail customer contracts with new customers (and adding to its contracts with old customers) language both advising customers on E911 services and requiring its customers to provide a notice to their employees and users, in the following (or substantially similar) language:

### 911 ADVISORY, AGREEMENT, WAIVER, LIMITATION OF LIABILITY AND INDEMNIFICATION

#### (a) 911 Advisory and Agreement

On June 3, 2005, in *In the Matters of IP-Enabled Services*, WC Docket No. 04-36 and *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, the FCC issued its First Report and Order and Notice of Proposed Rulemaking and promulgated new rules at 47 C.F.R. Part 9 regarding interconnected VoIP Services. While VOXPATH does not fit the definition of an Interconnected VoIP Service Provider, VOXPATH and Customer agree it would be advisable to provide to Customer and to users of Customer certain information regarding the circumstances under which E911 service may not be available or may be limited through the interconnected VoIP service. Customer acknowledges that it has received and understood Appendix 1 attached hereto and agrees to provide a copy of said Appendix and any amendments to Appendix 1 that VOXPATH may provide to Customer from time to time to all employees and users of Customer before they make use of the CPE or the APPLICATION,

#### (b) 911 Waiver, Limitation of Liability and Indemnification:

(1) Customer understands and agrees that (i) while APPLICATION and the CPE will pass 911 or E911 to CLEC, VOXPATH does not itself provide 911 or E911 Emergency Service or support connections to any 911 Emergency Service Public Safety Answering Point ("PSAP"), (ii) these 911 or E911 functions will be provided by CLEC, (iii) VOXPATH requires Customer to provide similar notice to its own users and (iv) Customer will notify Voxpath immediately whenever its address changes for any reason whatever.. Customer understands and agrees that 911 dialing and functionality is not the responsibility of VOXPATH, but of Customer's underlying service providers, and that Customer should make its own efforts to ensure that it has the means to make 911 Emergency Service Calls and that the necessary location information will be passed to the PSAP Customer understands and agrees that failure to notify Voxpath of any address changes at the Customer premise or relocation of the VSG will result in improper addresses being passed on to the PSAP in the event that an emergency 911 call is placed from Customer premise and neither Voxpath nor CLEC will bear any responsibility for the same.

(2) Customer will indemnify and hold harmless VOXPATH, its officers, directors, employees, affiliates, agents, and shareholders, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys fees) resulting from any claim for damages or any other relief in contract or tort or under any other theory of law by any person, including but not limited to Customer or any of Customer's users, that assert a cause of action, complaint, suit or other claim involving the lack of 911 Emergency Service availability, any failed or incomplete attempts to reach or communicate with 911 Emergency Service using VOXPATH's APPLICATION, any delay

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or frustration in emergency services or difficulty in locating Customer's or any person's location alleged to be caused by the use of the APPLICATION or CPE, or which are in any way based upon attempts to use the APPLICATION to contact 911. This paragraph shall survive termination of this Agreement.

(c) Customer waives any right to recover any damages of any kind above and beyond the amount paid for service charges over any affected time period and in no event shall they exceed service charges paid over a one month period, due to any loss related to the APPLICATION or CPE or any failure or degraded performance of the APPLICATION or CPE.

(d) Loss of Service Due to Power Failure. Customer acknowledges and understands that the Service does not function in the event of power failure. Should there be an interruption in the power supply, the Service will not function until power is restored. A power failure or disruption may require the user to reset or reconfigure equipment prior to utilizing the Service. Power disruptions or failures will prevent dialing any number and will preclude receipt of inbound calls. Customer agrees to provide notice to its clients and customers of this fact.

(e) Service Distinctions. Customer acknowledges and understands that the APPLICATION is not a telecommunications service. Important distinctions exist between telephone service and the offering provided for herein. VOXPATH is not a telecommunications carrier and does not provide telecommunications services.

(f) Limitation of Liability. VOXPATH shall not be liable for any delay or failure to provide the Service, including 911 dialing, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following:

- (1) act or omission of an underlying carrier, service provider, vendor or other third party;
- (2) equipment, network or facility failure;
- (3) equipment, network or facility upgrade or modification;
- (4) force majeure events such as those listed below;
- (5) equipment, network or facility shortage;
- (6) equipment or facility relocation;

service, equipment, network or facility failure caused by the loss of power to Customer; or any other cause that is beyond VOXPATH's control, including without limitation the failure of an incoming or outgoing communications, the inability of communications to be connected or completed, including 911 dialing, or degradation of voice quality. VOXPATH's liability for any failure or mistake shall not exceed Service charges with respect to the affected time period and in no event shall they exceed service charges paid over a one month period.

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### Appendix 1

#### 911 Usage Guidelines and Limitations

Customer agrees to make available to all employees of Customer and any users of APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) and CPE, without any modification, the following usage guidelines for accessing 911 services from APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) and CPE prior to their using APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) and CPE. Customer agrees that Customer will explain clearly and fully the contents of this Appendix 1 to all employees of Customer and any users of the APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) and CPE prior to permitting them access to any or all components of APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) and CPE.

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### **1. Dialing 911**

#### **Step 1:**

Dial the number or sequence of numbers selected by Customer on the handset to get an outside line. The default number to get an outside line is 9. If Customer has chosen some other number or sequence of numbers to get an outside line, then the system administrator or some other representative of Customer must provide the number selected by Customer to get an outside line to all users who wish to use APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) and CPE. Customer agrees that no users of APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) and CPE at Customer premises will be permitted to attempt to use APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) and CPE without being clearly provide the number or sequence of numbers that must be dialed to get an outside line.

#### **Step 2:**

You will know you have an outside line when you hear a dial tone.

#### **Step 3:**

When you hear the dial tone, dial 911 and wait for the emergency operator to answer the call.

### **2. Limitations to Access to 911 Services**

The address passed to the 911 operator will be the main address where the Voxpath equipment is located. If you are in another building, you should be sure to give this information to the 911 operator, along with your floor and other information necessary for emergency personnel to get to your location.

911 services may be limited or not be available in the following situations:

1. The Customer relocates Voxpath equipment or CPE without coordinating this relocation with Voxpath.
2. There is a loss of power in the Customer premises and no back up power supply measures are in place or back up power supplies have been exhausted. In this situation, no users of Customer will be able to make or receive any calls using APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) and CPE from Customer premises including 911 calls.
3. Any problem on the Local Area Network on the Customer premise for any reason whatever, including but not limited to, equipment failure, faulty cabling and improper configuration of equipment, in which the CPE are installed that cause calls to not properly originate, be transmitted or terminate to and / or from the Customer premises.
4. The broadband connection that carries the voice traffic to and from Customer premise while using APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) and CPE suffers a service outage, malfunctions or becomes non-functional for any reason whatever, and prevents the origination, transmission and termination of telephone calls, including 911 calls, for the duration of the outage or malfunction.
5. APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) suffers from an unplanned outage of service for any reason whatever or APPLICATION (Voxpath Voice<sup>SM</sup> Hosted Business IP Telephony Application) has been taken down for a planned service or maintenance upgrade. For the duration of this outage of service, telephone calls including 911

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calls cannot be originated, transmitted or terminated to and / or from the Customer premises.

6. The CLEC who transfers 911 calls to the local PSAP suffers an unplanned service outage for any reason whatever. For the duration of this outage of service, telephone calls including 911 calls cannot be originated, transmitted or terminated to and / or from the Customer premises.
7. Any unforeseen problem on the overall network, whether a part of the BSP network, CLEC network or any other service provider, who may or may not be providing services to Customer, over whose network the call is transmitted that cause a 911 call originating from the Customer premise to the local PSAP to not be completed.

Should 911 services be limited or not be available due to the factors above or any other circumstance, 911 calls should be made by other means, such as cell phones.

Voxpath retains the customer contract in its contract files.

Voxpath continues to work on sticker language that will be both useful and readable (a major problem), and anticipates distributing stickers to customers in the near future.

In addition, on August 26, 2005, Voxpath Networks, Inc. sent e-mails, followed on August 31, 2005 with letters by U.S. mail to each of its retail customers, including a label in the form of the "E911 Usage Guidelines" below to be placed on or near the CPE with the following content, requesting customers to give both e-mail and hard copy acknowledgement:

### **Voxpath Networks Inc. E911 Notice**

Dear Customer,

The Federal Communications Commission recently promulgated new rules regarding Interconnected VoIP Services. While VOXPATH does not fit the definition of an Interconnected VoIP Service Provider, VOXPATH believes it advisable to provide to you and your users and customers information regarding the circumstances under which E911 service may not be available or may be limited through the VOXPATH APPLICATION and CPE. This information is provided in the attached E911 Usage Guidelines and Limitations. *This information should be provided to all of your employees and users before they make further use of VOXPATH services or equipment.* In addition, a copy of the attached E911 Usage Guidelines and Limitations should be posted near each instrument. We anticipate providing you with stickers to place on CPE at a future date.

E911 Notice:

While the VOXPATH APPLICATION and CPE will pass 911 or E911 to Customer's CLEC, VOXPATH does not itself provide 911 or E911 Emergency Service or support connections to any 911 Emergency Service Public Safety Answering Point ("PSAP"). These 911 or E911

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functions are provided by Customer's CLEC. Limitations on these functions are noted on the attached E911 Usage Guidelines and Limitations.

Further, in order to make sure accurate information is passed to 911 services, you should notify VOXPATH immediately whenever VOXPATH-provided CPE is moved or your address changes for any reason whatever.

The Federal Communications Commission is requiring that Interconnected VoIP Service Providers both provide this kind of notice to their customers and get and keep on file an affirmative acknowledgement from their customers that they have gotten such a notice. While VOXPATH does not believe it is covered by this requirement, it seems advisable to both provide the notice and ask for acknowledgement. To that end, VOXPATH is providing this document in both e-mail and by US mail. Please respond to the e-mail and acknowledge that you have received this notice, and please complete and return the attached acknowledgement by mail as well.

Thank you in advance for your attention to this matter.

Voxpath Networks Inc.

### **E911 Usage Guidelines and Limitations**

#### **1. Dialing 911**

Step 1:

Dial the number or sequence of numbers selected by Customer on the handset to get an outside line. The default number to get an outside line is 9. If Customer has chosen some other number or sequence of numbers to get an outside line, then the system administrator or some other representative of Customer must provide the number selected by Customer to get an outside line to all users who wish to use APPLICATION (Voxpath VoiceSM Hosted Business IP Telephony Application) and CPE. Customer agrees that no users of APPLICATION (Voxpath VoiceSM Hosted Business IP Telephony Application) and CPE at Customer premises will be permitted to attempt to use APPLICATION (Voxpath VoiceSM Hosted Business IP Telephony Application) and CPE without being clearly provide the number or sequence of numbers that must be dialed to get an outside line.

Step 2:

You will know you have an outside line when you hear a dial tone.

Step 3:

When you hear the dial tone, dial 911 and wait for the emergency operator to answer the call.

#### **2. Limitations to Access to 911 Services**

The address passed to the 911 operator will be the main address where the Voxpath equipment is located. If you are in another building, you should be sure to give this information to the 911 operator, along with your floor and other information necessary for emergency personnel to get to your location.

911 services may be limited or not be available in the following situations:

1. The Customer relocates Voxpath equipment or CPE without coordinating this relocation with Voxpath.
2. There is a loss of power in the Customer premises and no back up power supply measures are in place or back up power supplies have been exhausted. In this situation, no users of Customer will be able to make or receive any calls using APPLICATION (Voxpath VoiceSM Hosted Business IP Telephony Application) and CPE from Customer premises including 911 calls.
3. Any problem on the Local Area Network on the Customer premise for any reason whatever, including but not limited to, equipment failure, faulty cabling and improper configuration of equipment, in which the CPE are installed that cause calls to not properly originate, be transmitted or terminate to and / or from the Customer premises.
4. The broadband connection that carries the voice traffic to and from Customer premise while using APPLICATION (Voxpath VoiceSM Hosted Business IP Telephony Application) and CPE suffers a service outage, malfunctions or becomes non-functional for any reason whatever, and prevents the origination,

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transmission and termination of telephone calls, including 911 calls, for the duration of the outage or malfunction.

5. APPLICATION (Voxpath VoiceSM Hosted Business IP Telephony Application) suffers from an unplanned outage of service for any reason whatever or APPLICATION (Voxpath VoiceSM Hosted Business IP Telephony Application) has been taken down for a planned service or maintenance upgrade. For the duration of this outage of service, telephone calls including 911 calls cannot be originated, transmitted or terminated to and / or from the Customer premises.

6. The CLEC who transfers 911 calls to the local PSAP suffers an unplanned service outage for any reason whatever. For the duration of this outage of service, telephone calls including 911 calls cannot be originated, transmitted or terminated to and / or from the Customer premises.

7. Any unforeseen problem on the overall network, whether a part of the BSP network, CLEC network or any other service provider, who may or may not be providing services to Customer, over whose network the call is transmitted that cause a 911 call originating from the Customer premise to the local PSAP to not be completed.

Should 911 services be limited or not be available due to the factors above or any other circumstance, 911 calls should be made by other means, such as cell phones.

### **Voxpath Networks Inc.**

#### **Customer Acknowledgement of E911 Notice**

Customer acknowledges that it has received and understood the E911 Usage Guidelines and Limitations attached hereto and agrees to provide a copy to all employees and users of Customer before they make further use of the VOXPATH CPE or APPLICATION.  
PLEASE SIGN BELOW TO ACKNOWLEDGE YOUR RECEIPT.

#### **CUSTOMER**

Signature:

Name:

Title:

Date:

Address:

Records of acknowledgment by contract are kept with each customer's contract file. Records are kept in each customer's customer service file and in a separate Excel database to track those customers who have affirmatively acknowledged the above e-mail and mail.

*Quantification of how many of the provider's subscribers, on a percentage basis, have submitted an affirmative acknowledgement, as of the date of the report, and an estimation of the percentage of subscribers from whom they do not expect to receive an acknowledgement by September 28, 2005.*



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As of September 1, 2005, approximately 24% of Voxpath's retail customers have submitted an affirmative acknowledgement to the August 26<sup>th</sup> e-mail. An estimate of the percentage of customers from whom Voxpath does not expect to receive an acknowledgment by September 28, 2005 is 0%.

*Detailed description of whether and how the provider has distributed to all subscribers warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on and/or near the customer premises equipment used in connection with the interconnected VoIP service. This information should include, but is not limited to, relevant dates and methods of contact with subscribers (i.e. e-mail, U.S. mail).*

All customers have received appropriate warning labels. The e-mail and mail notice described above, sent to all customers, contained an appropriate label. Voxpath anticipates distributing stickers in the near future, once difficulties in preparing a useful and readable sticker have been surmounted.

*A quantification of how many subscribers, on a percentage basis, to whom the provider did not send the advisory described in the first bullet above and/or to whom the provider did not send warning stickers or other appropriate label as identified in the bullet immediately above.*

0 (zero) %.

*A detailed description of any and actions the provider plans to take towards any of its subscribers that do not affirmatively acknowledge having received and understood the advisory.*

Voxpath will contact such customers by telephone and advise them that the FCC requires an acknowledgment, and believes that there will be no such customers by September 28, 2005.

*A detailed description of any and all plans to use a "soft" or "warm" disconnect (or similar) procedure for subscribers that fail to provide an affirmative acknowledgement by*

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*September 28, 2005.*

Voxpath has no current plans to disconnect customers.

*Detailed description of how the provider is currently maintaining any  
acknowledgements received from its subscribers.*

Customer acknowledgements are part of all new customer contracts. Acknowledgment of the August customer advisories is maintained in the customers' customer service files and in a separate Excel database.

*The name, title, address, phone number, and e-mail address of the person(s)  
responsible for Voxpath Networks, Inc.'s compliance efforts with the VoIP E911 Order.*

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